IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 349 of 1982

WITH

FIRST APPEAL Nos 350, 351, 800 & 953 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BAROT MAFATLAL KEDARSINGH

Versus

SPECIAL LAND ACQUISITION OFICER

Appearance:
In all matters :

MR SR SHAH for Petitioners and
MR RC JANI for Petitioner
MR MA PATEL, AGP for Respondent No. 2
MR RAJNI H MEHTA for Respondent No. 3

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA
Date of decision: 19/06/2001

ORAL JUDGEMENT (Per : MR.JUSTICE J.N.BHATT)

1. This batch of six appeals raise common questions and arises out of impugned common judgment. Therefore, they are being disposed of by this common judgment.

2. The appellants are the original claimants and owners of the lands which came to be acquired by virtue of a notification under Section 4 (1) dated 25/3/1975 and published in Gujarat Government Gazette on 3/4/1975 followed by a notification under Section 6(1) of the Land Acquisition Act, 1894 (Act) on 20/12/1976 and published on 27/1/1977. The public notice as well as individual notices were published and served. The claimants raised their claim before the Land Acquisition Officer. The Land Acquisition Officer by his award dated 22/1/1979 fixed the market price at the rate of Rs.6/-, Rs.7/- and Rs.8/per sq. mtr. under Section 11 of the Act. Being dissatisfied by the award of the Land Acquisition Officer respondent no. 1 made applications for a reference under Section 18 of the Act claiming an amount of Rs.25/- per sq. mtr. for the acquired lands for the purposes of construction of office building and schools for acquiring authority - respondent no.3.

3. The References were heard and adjudicated upon by the learned Assistant Judge, Mehsana and in a common judgment dated 31/7/1981 in 7 Reference Cases awarded Rs.10/- per sq. mtr. Thus, Reference Court awarded additional amount to the claimants in L.A.R. Nos. 16 of 1979 to 22 of 1979 which are under challenge in this group of six appeals at the instance of the original claimants.

4. We have heard the learned advocates appearing for the parties. We have gone through the entire record. We are also taken through the relevant legal propositions and the relevant case law in course of submissions made before us.

5. The learned advocate appearing for the appellants original claimants Mr. Shah has criticized the approach of the Reference Court in granting and awarding only an amount of Rs.10/- per sq. mtr. for the acquired land of the claimants and has submitted that the claimants are entitled to atleast an amount of Rs.25/- per sq. mtrs. as market price. This submission is also supported by learned advocate Mr. Jani appearing for some of the appellants; whereas learned advocate Mr. Mehta while appearing for respondent no. 3 - ONGC has opposed the said submission and Learned AGP has supported Mr. Mehta.

6. After having taken into consideration the factual matrix emerging in the present group of appeals and considering the relevant proposition of law, we find that the determination of the market price by the Reference Court in the impugned common judgment in Reference Cases is very low and highly conservative and the market price awarded at the rate of Rs.10/- per sq. mtr. against the claim of Rs.25/per sq. mtr. is required to be modified and enhanced in the light of the facts and circumstances of the case. Section 23 of the Act provides for the matters to be considered in determining the compensation. The law with respect to determination of the market value of the land acquired and provisions of the Act have been extensively explored by catena of judicial pronouncements. Under Section 23 for determination of the market value relevancy of sale and award, examples and instances of market value of the land acquired and provisions of the Act have been also extensively explored by catena of judicial pronouncements. Under Section 23, for determination of the market value examples and instances of contemporaneous sale transactions or comparable awards in respect of land having similar advantages have material and substantial evidentiary value.

7. The date of notification under Section 4(1) of the Act is 22/1/1979. A big parcel of land admeasuring almost 50,000 sq. mtrs. came to be acquired by the respondent no. 1 on behalf of respondent no. 2 for the purpose and benefit of respondent no. 3 situated in Mehsana city. The Reference Court after considering several sale instances and also award in Land Acquisition Reference Case No. 4/1975, dated 4/10/1978, fixed market value at Rs.10/- per sq. mtr. against the award of Land Acquisition Officer between Rs.6/- and Rs.8/- per sq. mtr. and that too against the claim made by the

claimants at the rate of Rs.25/- per sq. mtr. In our opinion the fixity of market value made by the Reference Court at the rate of Rs.10/- per sq. mtr. is unreasonable and erroneous requiring upward revision.

8. The question therefore would fall into consideration is as to what should be just and reasonable market price for the acquisition of the lands in question. At this stage we are prompted to highlight following facts and circumstances emerging from the record which have remained unquestioned :-

i. The acquired lands are situated in the city of Mehsana itself, which are not far from National Highway.

ii. The topographical and geographical situation of the acquired lands is at a prominent place, as a result of which it has higher potential and better marketability.

iii. Mehsana is one of the important towns in the North Gujarat. It is a main district centre having various Government offices and Panchayat administration.

iv. All the important offices of the Government, ONGC, Panchayat and other wings of the Government are situated in Mehsana.

v. Mehsana is a place having railway junction and facility of railway yard.

vi. National Highway No.8 is passing close to it

vii. The Land Acquisition Officer has also referred it as a very fast developing township.

viii. Ofcourse the lands under acquisition are agricultural lands but the potential are very high, not only in view of the geographical situation and topographical position, but also in view of the fact that the entire parcel of the land acquired fell in non-agricultural zone.

ix. The acquired lands are also levelled lands and the township is very well developed having all infJJJJJJJJJJJJ J

9. The Reference Court has also taken note of aforesaid aspects in para. 12 in the common judgment under challenge. The Reference Court has also considered the comparable sale instances and a comparable award. It is mentioned in the common judgment in a tabular form in para. 11. It would be, therefore, not only appropriate, but necessary to refer the entire table relied on by the claimants and referred by the Reference Court :

Sr	Date of Sale	Exhibit which it is proved	Name of the Purchaser	Exhibit Number	Survey Number	Plot of Area	Consi-	Names of
1.	23/3/1966	34	Purchaser Himatlal	43	1956	232-26	6000	Sah Himatlal Ihvarlal Jagjivandas
2.	18/10/69	35	Vendor Dashrath lal Varvabhai Barot	44	1950	A.0-5 G.	18,600	Mstri Jayanti ll Lallubhai o Billimora
3.	17/8/70	36	Bhagwandas Jagjivandas	41	1990/118/1 1990/118/2	848-75 8 Gh.	2,000	Bagwandas

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4. 4/2/70	-	Copy of the award which was pronoun--ced on 4/10/78	29	1983 96 (22/- per Sq.M.)	Are Sq.M. 240,603 10		O GC Mahesana	
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5. 16/7/75	31	Vendor Rameshcha--ndra Ambulal	42	1990/64	711.53	20,000	ijaysingh	

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6. 2/6/77 - Copy of the Award 30 1985(p) H.A.Sq. 589,667
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10. 11/11/70 60 Produced by the - 1990/95 2- 00 24,224
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11. 28/12/71 61 -do- - 1828 1- 26 16,251
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10. After having taken into consideration the sale

instances at Exhs. 27 to 36 and a comparable award of the same Court in Land Reference Case No. 4/1975 dated 4/10/1978, the market rate is required to be upwardly revised and raised to Rs.20/- per sq. mtr. instead of Rs.10/- per sq. mtr. fixed by the Reference Court and against the claim of Rs.25/- made by the claimants and reiterated by Mr. Shah and Mr. Jani. In our opinion, therefore, the market value of the acquired lands is enhanced and fixed at the rate of Rs.20/- per sq. mtr. This batch of appeals is therefore required to be allowed to that extent and the impugned common judgment and awards made to the claimants - appellants before us shall stand modified accordingly. Appeals are partly allowed.

Before parting, we would like to mention that learned advocates Mr. Shah and Mr. Jani were justified in their submission that respondent no. 3 acquiring authority should be directed to pay the due amounts. Therefore, the respondent no. 3 - ONGC acquiring authority is directed to deposit the amount due and payable to the claimants as per this judgment within a period of three months.

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* Pansala.